

REMARKS

By this amendment, claims 1, 2, 4, 6-13 and 15-20 remain in this application.

In the Office Action, the Examiner rejected Claims 1, 2, 4, 6-13, 19 and 20 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Claims 12, 13 and 20 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

The Examiner contends there is no support for a single flexible member forming first and second loops wherein the flexible member is movable from a first retracted position within the openings. Applicants respectfully disagree. In the claims as originally filed, such recitation is disclosed. For example, in original claim 2, the flexible member is stated to be "contained within the catheter in the first position so the cross sectional dimension of the catheter at a portion containing the flexible member does not exceed other cross-sectional dimensions of the catheter." This claim was determined to read on the elected species of Figure 26. Another example is original claim 16 which recites "the catheter has an opening in a sidewall through which the flexible member extends when moved to the second looped position." Appropriate language can be added to the specification by the Applicants for antecedent basis if desired by the Examiner. A further example can be found on page 11 of the specification where it states "As in the previous embodiment, advancement of tube or shaft 172 deploys wire 161 through the slot in the sidewall of tube 174 to assume the looped configuration and stretch porous membrane 176 to the deployed configuration on both sides of the tube 174." On page 12, it states with reference to Figure 27 that "the flexible member in the form of wire 181 extends through slot 194 of tube 192, forming two loops on each side of tube 192..." The slot configuration of Figure 27 resembles that of Figure 26 and therefore one of ordinary skill in the art would know from at least the drawing and description of Figure 27 that the flexible member extends from the slot of Figure 26.

Consequently, Applicants submit there is sufficient support for the flexible member retraction recitation of the claims. However, to expedite prosecution, Applicants have amended independent claims 1 and 12 to recite that the flexible member (wire) is movable from a first retracted position wherein a portion lies within the openings. In addition to the foregoing examples, it can be seen in Figure 26 that at least a portion of the wire lies within the slots.

With respect to the §112 rejection of claim 12, the recitation of at least a portion of the filtering material being retracted within the catheter and unexposed during insertion of the catheter has been deleted. This obviates the rejection of claims 12, 13 and 20 under 35 U.S.C. 112, first paragraph set forth in Paragraph 8 of the Office Action.

Claims 15 and 16 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 6,425,909 to Dieck, et al. The Dieck patent describes how when the sheath 60 is retracted or the expandable element 6 advanced, the coils 60 are free to expand the filter element. The Dieck patent does not anticipate claim 15. The Dieck patent fails to disclose a separate loop formed on each side of a longitudinal axis of the catheter. The Dieck device has a series of loops progressively increasing in diameter axially along the length to form a conical shape.

Consequently, claim 15 patentably distinguishes from the Dieck patent and the rejection should be withdrawn. Claim 16 depends from claim 15 and is therefore believed patentable for at least the same reasons as claim 15.

Claims 2, 6-11 and 13 depend from either claims 1 or 12 and are therefore believed patentable for at least the same reasons as claims 1 and 12.

Note that claims 21 and 22 have been added, dependent on claim 1 and 12, respectively, reciting that the central portion of the first loop opening and a central portion of the second loop opening are radially spaced from the longitudinal axis. These claims are also believed patentable.

Prompt and favorable reconsideration of the present application is respectfully requested. The Examiner is invited to contact the undersigned should the Examiner believe it would expedite prosecution.

Respectfully submitted,

Dated: 6/5/04

By: Neil D. Gershon

Neil D. Gershon
Reg. No. 32,225
Attorney for Applicant

Neil D. Gershon
1011 High Ridge Road
Stamford, CT 06905